

California Energy Commission
PROPOSED REGULATIONS
PROPOSED 15-DAY LANGUAGE

NONRESIDENTIAL BUILDING
ENERGY USE DISCLOSURE PROGRAM

Proposed Regulations: California Code of Regulations,
Title 20, Division 2, Chapter 4, Article 9, Sections 1680 - 1685



CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

JUNE 2012

CEC-400-2010-004-15DAY

CALIFORNIA ENERGY COMMISSION

Martha Brook
Program Senior Mechanical Engineer

Justin Regnier
Project Manager/Mechanical Engineer

Craig Hoellwarth
Supervisor

Eurllyne Geiszler
Office Manager
High Performance Buildings and Standards
Development Office

G. William Pennington
Acting Deputy Director
Efficiency and Renewable Energy Division

Robert P. Oglesby
Executive Director

DISCLAIMER

Staff members of the California Energy Commission prepared this report. As such, it does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warrant, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the uses of this information will not infringe upon privately owned rights. This report has not been approved or disapproved by the Energy Commission nor has the Energy Commission passed upon the accuracy or adequacy of the information in this report.

PREFACE

The California Energy Commission has released proposed regulations for implementing Assembly Bill (AB) 1103 (Saldaña, Stats. 2007, ch. 533), and AB 531 (Saldaña, Stats. 2009, ch. 323) for public review and comment. Those statutes enacted (and amended) Public Resources Code section 25402.10, which the proposed regulations would implement. The proposed regulations are in this document and are also available online at:

<http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html>

On July 15, 2009, the Energy Commission adopted an Order Instituting Rulemaking, opening the public process to develop and adopt new regulations for the nonresidential building energy use benchmarking and disclosures required by Public Resources Code Section 25402.10. The Energy Commission's Efficiency Committee held public workshops on August 13, 2009, and May 17, 2010, and the Energy Commission staff held a public workshop on September 12, 2011, to receive public comments on preliminary drafts of the regulations. Throughout this process, the Energy Commission received and considered comments from stakeholders and the public, including public- and investor-owned utilities, building owner associations and individual owners, energy efficiency organizations, realtors, and environmental organizations.

On March 23, 2012, the Energy Commission issued its first set of formally proposed regulations, referred to as "45-Day Language." Now, per California Government Code, section 11346.8 (c), the Energy Commission releases changes to the 45-Day Language for a 15-day comment period ("15-Day Language"). The Energy Commission will accept public comment on the 15-Day Language through July 11, 2012, and it will consider the adoption of these regulations at a regular business meeting on July 11, 2012, beginning at 10 a.m. at 1516 Ninth Street, Sacramento, California.

ABSTRACT

The California Energy Commission developed the proposed regulations to fulfill the purposes of AB 1103, help carry out the Energy Commission's mission of promoting energy efficiency in California, and implement, interpret, and make specific the provisions of Public Resources Code, Section 25402.10.

The proposed regulations require ~~the~~an owner of a nonresidential building within California, in advance of the sale, lease, or and financing of the building, to benchmark the building's energy use using the U.S. Environmental Protection Agency (EPA) Portfolio Manager system and to disclose statements of the building's energy usage to potential buyers, lessees, and lenders.

The proposed regulations also require utilities serving the building to release the most recent 12 months of ~~energy use data for the entire~~ building's energy use data for the specified utility meters or accounts to an owner's U.S. EPA's Portfolio Manager Account.

Once final, the regulations will be codified in Article 9, Sections 1680 through 1685, ~~to~~of the California Code of Regulations, Title 20, Division 2, Chapter 4.

Keywords: Benchmarking, disclosure, commercial, nonresidential, ENERGY STAR®, Portfolio Manager, compliance report, data checklist, disclosure summary sheet, energy use data, EUI, facility summary, utility, statement of energy performance, data release, aggregate, AB 1103, AB 531, Saldaña.

Regnier, Justin; Brook, Martha. 2012. *Nonresidential Building Energy Use Disclosure Program*Proposed Regulations; Title 20, Division 2, Chapter 4, Article 9, Sections 1680 – 1685. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-.

TABLE OF CONTENTS

PREFACE	i
ABSTRACT	ii
PROPOSED REGULATIONS	1
Section 1680. Purpose	1
Section 1681. Scope	1
Section 1682. Definitions	1
Section 1683. Schedule of Implementation	3
Section 1684. Disclosures	3
Section 1685. Benchmarking, Data Releases, Report.....	4

**PROPOSED 15-DAY LANGUAGE AMENDMENTS TO PROPOSED REGULATIONS
PURSUANT TO AB 1103 (2007, Saldaña)**

**Nonresidential Building Energy Use
Disclosure Program**

**California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 4. Energy Conservation
Article 9. Nonresidential Building Benchmarking and Disclosure**

June 15, 2012

Please note: Changes to the 45-Day Language, which was published on March 23, 2012, are shown in underline (for additions) and ~~strikeout (for deletions)~~.

Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for benchmarking and disclosing energy use data and energy use ratings for nonresidential buildings in California. The disclosed energy use ratings will include the Portfolio Manager Energy Performance Rating.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code. Reference: Section 25402.10, Public Resources Code.

Section 1681. Scope

This article applies to all nonresidential buildings in California.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code. Reference: Section 25402.10, Public Resources Code.

Section 1682. Definitions

The following definitions apply to this article:

- (a) "Building Owner" means a person possessing title to a nonresidential building, or an agent authorized to act on behalf of a person possessing title.

- (b) "Energy Commission" means the California Energy Commission.
- (c) "Compliance Report" means an electronic submission of a copy of the data used for generating disclosure documents, submitted within the Portfolio Manager system from the building owner's account to the Energy Commission's account.
- (d) "Data Checklist" means a report generated by Portfolio Manager that summarizes a property's physical and operating characteristics.
- (e) "Disclosure Summary Sheet" means the Energy Commission document detailing the contents and relevance to California buildings of disclosures generated by Portfolio Manager.
- (f) "Energy Provider" means ~~any non-electric and gas utility~~ an entity, providing any source of energy, other than electricity or natural gas, to a nonresidential building as defined by Section 25109, Public Resources Code, used by a nonresidential building.
- (g) "Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy used by a nonresidential building.
- (h) "Entire Building" means a building for which the owner possesses title.
- (i) "EPA" means the U.S. Environmental Protection Agency.
- (j) "Facility Summary" means a report generated by Portfolio Manager that summarizes the space and energy usage of a building and compares a building's energy use to national ~~averages~~ medians.
- (k) "Nonresidential Building" means a building of occupancy type A, B, E, I-1, I-2, M, R1, S, ~~and/or~~ Type U parking garages, as defined in the California Building Code, Title 24, Section 302 et seq. (2007).
- (l) "Portfolio Manager" means the EPA's ENERGY STAR® program online tool for managing building energy use data.
- (m) "Portfolio Manager Energy Performance Rating" means an EPA energy efficiency measurement represented as a score from 1 to 100, normalized for a building's characteristics, operations, and regional weather.
- (n) "Square Feet" means total gross square footage of a building.
- (o) "Statement of Energy Performance" means a report generated by Portfolio Manager that supplies data about a building's energy performance, and if available, the building's Portfolio Manager Energy use Performance Rating.
- (p) "Utility" means an entity providing electricity or natural gas to a nonresidential building owner or tenant.

Note: Authority cited: Sections 25213, 25218 (e), 25402.10, Public Resources Code. Reference: Section 25402.10, Public Resources Code, ~~Sections 302 et seq., Title 24, California Building Code.~~

Section 1683. Schedule of Implementation

A building owner shall comply with this article according to the following schedule:

- (a) On ~~and~~ after January 1, 2013, for a building with total floor area measuring more than 50,000 square feet.
- (b) On ~~and~~ after July 1, 2013, for a building with a total floor area measuring more than 10,000 square feet and up to 50,000 square feet.
- (c) On ~~and~~ after January 1, 2014, for a building with a total floor area measuring at least 5,000 square feet and up to 10,000 square feet.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code. Reference: Section 25402.10, Public Resources Code.

Section 1684. Disclosures

- (a) ~~According to the implementation schedule established in Section 1683,~~ A building owner shall disclose the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building to:

- (1) A prospective buyer of the entire building, as soon as practicable before execution of the sales contract; ~~or~~
 - (2) A prospective lessee of the entire building, as soon as practicable before execution of the lease; ~~or and~~
 - (3) A prospective lender financing the entire building, as soon as practicable before submittal of the loan application.
- (b) Nothing in these regulations permits an owner to use tenant energy use data for purposes other than compliance with Public Resources Code, section 25402.10.

~~(b)(c)~~ A building owner may supplement the above disclosure with forms from other sources, such as the ASTM International (formerly known as the American Society for Testing and Materials) checklist E2797-11 (2011), the Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code. Reference: Section 25402.10, Public Resources Code.

Section 1685. Benchmarking, Data Releases, Report

- (a) ~~On or after the dates specified in Section 1683 and a~~ At least 30 days before a disclosure is required by Section 1684, a building owner shall open an account at the EPA's ENERGY STAR® program Portfolio Manager website, and within the account:
- (1) Provide the owner name and the owner e-mail address.
 - (2) Provide the building name, the building street address, city, and ZIP code, and the year in which the building was constructed.
 - (3) Identify all sources of energy use data for the entire building, ~~such as including~~ but not necessarily limited to active and inactive utility meters, onsite generation, district thermal energy, ~~or fuel(s) and fuel~~ serving the building, for at least the most recent 12 months.
 - (4) Provide space use characteristics as specified by Portfolio Manager for all space types in the entire building ~~the building type, if the type is available~~.
 - (5) Request all ~~utility~~ utilities and energy provider ~~companies~~ serving the building to release energy use data for the entire building from at least the most recent 12 months for specified meters or accounts to the owner's Portfolio Manager Account; or, the owner may manually enter all energy use data for the entire building from at least the most recent 12 months to the owner's Portfolio Manager account.
- (b) ~~As soon as practicable and no later than 30~~ Within 15 days of ~~after~~ receiving a request under subdivision (a) of this section, ~~from a building owner to release a building's energy use data, a utility company a utility or energy provider shall upload all energy use data for the entire building from at least the most recent 12 months of the entire building's energy use data for the specified utility meters or utility accounts to the building owner's Portfolio Manager Account. If a building has a utility or energy provider account for which the owner is not the customer of record, the utility or energy provider shall aggregate or use other means to reasonably protect the confidentiality of the data each account holder's data from uses other than compliance with Public Resources Code, section 25402.10. A utility or energy provider may verify a request or ask for clarification before releasing data.~~
- (c) After all ~~utility~~ utilities and energy provider ~~companies~~ serving a building have ~~uploaded and/or provided a building's energy use data~~ complied with subdivision (b) of this section, and in sufficient time to comply with the schedule specified in section 1683, ~~at the~~ building owner shall access the Energy Commission's AB 1103 compliance website, and
- (1) Download the Disclosure Summary Sheet;
 - (2) Select the link to Portfolio Manager and log on to the owner's account;
 - (3) Complete and submit the compliance report; and

- (4) Download the building's Statement of Energy Performance, Data Checklist, and Facility Summary. The Statement of Energy Performance, Data Checklist, and Facility Summary shall expire 30 days after they are generated.
- (d) The Energy Commission shall treat an ~~individual~~ the compliance report as confidential but may aggregate data from ~~individual~~ reports for use in public documents, if - Aggregation shall be sufficient to mask detection prevent determination of a utility or energy provider customer's individual building energy use.
- (e) ~~In lieu of~~ If there is any missing information missing from in the a disclosure, and if the owner has made a reasonable effort to ascertain the missing information, the owner may then use an approximation of the information, provided that the approximation is identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this article.

Note: Authority cited: Sections 25213, 25216.5(d), 25218(e), 25320, 25402.10, Public Resources Code. Reference: Sections 25402.10, Public Resources Code.